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Federal Communications Commission
Office of the Secretary

AMERICOM, A California
Limited Partnership
Station KHTX(AM)
Truckee, California

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FCC File No. BP-871007AI

says raises any substantial or material issue.¹ Third, since the §307(b) consideration would be between Sparks (the proposed location) and an off-the-air station, even the §307(b) issue is in KHTX's favor.

Constant's argument is very simplistic. It says that suitable sites are available for KHTX based on its realtor's letter. Therefore, because KHTX proposes to move and because (in Constant's opinion) there is no reason to move, a §307(b) issue is raised. Constant then recites a parade of §307(b) cases which purport to show the move from Truckee to Sparks is not allowable.

is a suitable antenna site available around Truckee? no affirmative showing has been made by American.

The flaw in Constant's argument lies in its premise, i.e., that a suitable antenna site for KHTX is available. Constant ignores the signal coverage problem. KHTX has been trying for over four years to resolve the problem caused by its loss of an antenna site. The problem, to restate a long history, is that KHTX lost its tower site (the owner wants to develop the land, as it is near a well known ski resort). The Tahoe Basin is probably the most heavily regulated area in the United States with respect to land use. Further, the great majority of the land in the area is owned by the U.S. Forest Service, which is anxious to preserve the Tahoe National Forest in its natural state. As a consequence, the number of areas in which a radio station can locate "unsightly" towers which have the potential for RF radiation is extremely limited.

¹ The Petition is so devoid of competent evidence that it should be dismissed as a sham or strike pleading, filed in violation of the Commission's processes.

KHTX does not dispute the availability of land for towers. It does unequivocally state that those sites are not suitable for its AM station. KHTX investigated, as Constant apparently did not, those sites. It found it could not provide adequate service from any of them to the city of Truckee. Nonetheless, KHTX chose the one offering the best service, and filed an application seeking a waiver of certain FCC rules (notably the nighttime coverage rule). That waiver was denied as the best site had no nighttime coverage of its city of license and the application dismissed. KHTX petitioned for reconsideration and said, in effect, that the site may have its flaws, but it was the best one available. Nonetheless, the Commission dismissed the petition for reconsideration. In doing so, the Commission itself suggested KHTX file an application changing the city of license. The application for Sparks under consideration is KHTX's response to the Commission's invitation.

Constant's opposition is based on hearsay.

The statement upon which Constant relies to "demonstrate" the availability of suitable sites is unsworn testimony, i.e., hearsay.² Mr. Constant's sworn statement that he believes it to

letter is hearsay.

The realtor's statement demonstrates
its lack of competence

The realtor is, presumably, competent to testify about land values and other real property matters within his area of expertise. However, his letter is offered for more than that. His letter is offered to show that there are sites available near Truckee on which one could locate an AM tower (or towers). By implication the letter has to be making the claim that a signal meeting the FCC's requirements can be put over the city of Truckee from those sites.³ Just to explicitly detail what the realtor's letter is being used to support demonstrates its weakness. KHTX never claimed there was no land; it does and did claim that the land available to it will not allow proper signal coverage of Truckee. The question is whether there are available sites around Truckee meeting zoning, size and other requirements from which a signal meeting FCC standards regarding coverage of Truckee can be broadcast. The realtor's letter, failing to address (as it cannot) the engineering issue, is worthless as evidence. Constant offers

³ If the letter isn't being offered to show the site is suitable considering engineering (i.e., allocation) standards, then it is completely irrelevant and should be disregarded.

no evidence from anyone qualified to testify that, considering the high nighttime interference free limits, there are sites from which the requisite signal strength can be put over Truckee at night. As a result, his Petition raises no material issue of fact.

§307(b) does not dictate a different conclusion.

Because Constant's §307(b) argument is based on the premise that one can broadcast from a site near Truckee and thus remain a Truckee station, the argument falls when his "demonstration" of suitable alternate sites fails. Absent reliable evidence that there are alternate sites from which coverage of Truckee can be obtained (and KHTX, after four years of looking, can find none) there is no real §307(b) issue. Without an alternate site, the §307(b) comparison becomes Sparks vs. no station at all. Clearly a station in Sparks is preferable to no station, and all of Constant's comparisons of city sizes is meaningless.

WHEREFORE, AMERICOM respectfully requests the Commission to summarily dismiss the Constant Petition to Deny and promptly grant the above-referenced application.

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CERTIFICATE OF SERVICE

I, Joel B. Stoa, do hereby certify that I have, this 27th day
of 1996